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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 WILLIAM E COSDEN,

11 Petitioner,

12 v.

13 STATE OF WASHINGTON,

14 Respondent.

CASE NO. C14-5739 BHS-JRC

REPORT AND RECOMMENDATION

NOTED FOR:
OCTOBER 17, 2014

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16 The District Court referred this petition for a writ of habeas to United States Magistrate
17 Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b) (1) (A)
18 and (B), and local Magistrate Judge Rules MJR3 and MJR4.

19 The Court recommends that petitioner's motion to proceed in forma pauperis be denied
20 because petitioner has the funds to pay the full five dollar filing fee. The Court should give
21 petitioner thirty days to pay the filing fee. If petitioner does not pay the fee, then the Court
22 should dismiss the action.

23 The United States District Court for the Eastern District of Washington transferred the
24 petition to this Court on September 16, 2014 (Dkt. 6). The financial documents petitioner

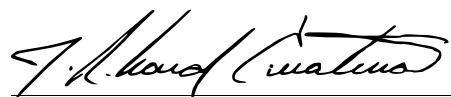
1 presented to the Court in connection with his motion to proceed *in forma pauperis* show that
2 petitioner has more than five dollars on hand and that he has an average spendable balance of
3 over one hundred dollars a month (Dkt. 5). Petitioner can afford the five dollar filing fee in this
4 case.

5 The right to proceed *in forma pauperis* is not absolute and denial of *in forma pauperis*
6 status is reviewed for abuse of discretion. *Denardo v. Collum*, 48 F.3d 1227 (9th Cir. 1995).
7 Further, the Ninth Circuit addressed the denial of *in forma pauperis* status over forty years ago
8 and held that proceeding *in forma pauperis* is a matter within the sound discretion of the trial
9 court in civil actions. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963). Here, petitioner has a
10 stream of funds available and can pay the filing fee. The Court recommends denying the motion
11 to proceed *in forma pauperis*.

12 Petitioner should be given thirty days to pay the full five dollar filing fee. Failure to pay
13 that fee should result in immediate dismissal of this petition by Court Order.

14 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
15 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
16 6. Failure to file objections will result in a waiver of those objections for purposes of de novo
17 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
18 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
19 October, 17, 2014, as noted in the caption. This Report and Recommendation is not a final
20 appealable order.

21 Dated this 23rd day of September, 2014.

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24 J. Richard Creatura
United States Magistrate Judge